



CHALLENGES FOR AN INDEPENDENT ASIAN HUMAN RIGHTS COMMISSION

*Bina D'Costa**

I.	INTRODUCTION	615
II.	UNIVERSALITY OF HUMAN RIGHTS	615
III.	DOMESTIC CONSTRAINTS	616
IV.	REPORTING AND COMPLAINT PROCEDURES.....	619
V.	CONCLUSION	620

I. INTRODUCTION

While there exists a solid body of principles and a wide-ranging and growing number of institutions currently working to promote and protect human rights in Asia, there have unfortunately been few consolidated regional efforts for legal enforcement against violations. An Asian Human Rights Commission is the most logical and sought after body for this purpose. Despite its obvious benefits, the Commission will invariably face challenges because of complexities surrounding the Asian states regarding free press, democratic opposition, independence of judiciary, and commitment to the rule of law. In my paper, I will point out some of the challenges a possible Asian Human Rights Commission will face in Asia. Due to the limitation of the paper, recommendations and their feasibility will not be explored.

II. UNIVERSALITY OF HUMAN RIGHTS

The Asian Human Rights Commission will face the challenge of comparing the national legislation with the international human rights law because the laws of many Asian countries are not in conformity with the fundamental principles of human rights. To understand this complex situation, the Asian government's position needs to be explained.

Asia's Human Rights Annual Report points out that both the East and the West are locked in a bitter conflict. The West's criticisms of Asian state records on human rights and democracy are met by Asia's responsive denial of the universality and inalienability of human rights. The West

* The Kroc Institute for International Peace Studies, University of Notre Dame.

regards human rights as essential to good and fair government and the social and economic development of countries. Asian countries disagree with this Western concept and offer an alternative viewpoint. They regard human rights, when based on the theory of individualism, as inappropriate for a number of reasons:

- 1) They are inconsistent with the Asian values, which place a high priority on the community;
- 2) The principal need in Asia is economic development contrary to the importance the West places on civil and political rights;
- 3) Social and economic rights are more important for the Asians and will receive higher priority; and
- 4) The West's attempts to impose human rights standards on Asia is motivated by its desire to establish hegemony over the rest of the world.

Now, what is described above is mainly the government's position and does not necessarily embrace citizen views. The political systems in most of the countries are not representing the people, do not respond to them, and are not accountable. In the West, human rights serve the function of *fine tuning* the system of government and administration, whereas in Asia, they have a huge transformative potential and can topple dictatorial regimes.

In most parts of Asia, communities are not consensual entities which operate under concepts of justice and fairness. A wide range of groups suffer under it, for example, indigenous people, women, minority religious groups, ethnic minorities, etc. Governments often justify the absence of open resistance as evidence of compliance, which is not at all true. However, since there is no outlet for voicing public dissatisfaction, local human rights groups are often branded not only anti-government but also as against people's interest, as the architect of modern Singapore, Lee Kuan Yew, calls them. Thus, the Commission's connection with local Non-Governmental Organizations (NGOs) will not be seen favorably by the governments, which will make it difficult to receive funding from them.

III. DOMESTIC CONSTRAINTS

The Asian Human Rights Commission will face difficulties when it comes to monitoring the human rights violations of countries. The countries in many cases may not allow the Commission or human rights NGOs to monitor the human rights situation. For example, Bhutan is very selective in issuing visas to human rights observers and journalists, and the

lack of democracy within the country has helped the country get away with abuses. Most visitors to Bhutan are those who buy expensive guided tours. Foreign journalists are carefully screened, and the domestic media is state controlled. According to a new report, about 105,000 Bhutanese of Nepali origin, about one-sixth of the country's population, fled the country between 1992 and 1995. International human rights groups observe forced evictions, but the Kingdom's reclusive nature has made it difficult to independently verify these claims. This is only one example. There are numerous other examples where international human rights groups were not allowed to monitor human rights situations. Even if the countries allow them to enter, the work may be extremely dangerous, or the people may not be able to speak freely with them.

Accountability of states is the other challenge for the Commission. For example, from 1975 until May 1993, when United Nations supervised elections were held, a single political party controlled most of Cambodian society, and exercised direct influence on every aspect of life. Though the political system was theoretically changed by the introduction of a new constitution in September 1993, there has been great reluctance to introduce any institutions that work on the basis of laws rather than as a consequence of personal instructions. When there is no legal procedure to hold anyone accountable, the Commission will be unable to do anything significant about the human rights abuses.

In 1993, delegates representing forty-nine nations from Syria to Japan met at the start of an unprecedented United Nations sponsored conference to try and fix the Asian agenda for the World Conference on Human Rights. During that time a significant number of state reports were overdue. Government answers in many areas such as arbitrary executions, disappearances, torture, arbitrary detention, sale of children, and religious intolerance were too often unsatisfactory, and the lists of unresolved issues were fairly long.

This example leads to slow moving bureaucratic machinery, which is a major obstacle to the effective promotion and protection of human rights in Asia. Asian bureaucrats often hold privileged positions and are allowed to act arbitrarily in many areas, including those of economic rights. For example, they can withhold public housing or dislocate people from one geographic area to another without explanation.

With the concept of human rights perhaps not as broadly understood in Asia as in the West, the Human Rights Commission should focus on *human rights education*, whether it be in the schools of Hong Kong or through street theater in Bangladesh. For example, Amnesty International is trying to adapt its policies and activities to local conditions by focusing on human rights education. The Commission may consider

promoting human rights education by designing programs for universities, schools, and professionals. The draft Asian Human Rights Charter mentions:

there is a wide tendency in most parts of Asia to discourage human rights education. Self-consciousness of the peoples of their human rights is regarded all too often as too dangerous a human phenomenon. Extreme forms of violence including mass massacres had been used to negate the effect of peoples' growing consciousness of rights.¹

The Tiananmen incident of 1989 is only one example.

It will be difficult to use the media as a means to provide human rights education. China, Malaysia, and Singapore have banned individual ownership of satellite dishes to prevent direct reception of Western programming, which they view as an assault on Asian values. The Singapore government has restricted the circulation of Western newspapers and magazines, such as *Time* and *The Economist* because officials dislike their coverage of Singapore affairs. The Asian approach towards free press is based on the premise that there can be no such thing as unbridled freedom. Freedom stops where responsibility begins, it is often said. How that responsibility is exercised is left to the individual or the media. But the government, as the paternal authority, sets down the markers on the room for maneuvering.

Lack of resources will be one major problem related to human rights education. The local human rights NGOs, which must work as vehicles to promote human rights, have funding problems. All of the existing human rights groups operate on shoestring budgets, about \$2 million a year for Asia Monitor, \$800,000 for the Hong Kong based Asian Human Rights Commission (AHRC) and only \$320,000 for Asian Students Association (ASA) which is largely a volunteer organization. Though they are Asian run, these groups rely on funding from Western sources, such as overseas development aid and contributions from church groups. Because of the poor welfare structures as compared to the West, there is intense competition with the hospitals, children's groups, and other groups for funds. The Commission itself will face a financial crisis if the Asian governments do not come forward to support it.

With this problem of fundraising is another related issue, which is prioritizing the issues. Human Rights Watch and Amnesty International

1. Asian Human Rights Commission, *Our Common Humanity The Draft Asian Human Rights Charter* (visited Oct. 15, 1997) <http://www.hk.supre.net/~ahrchk/ahr_draft_part2.htm>.

lobby on behalf of political prisoners as a priority for Asian Human Rights organizations. But in addition, with the rapid industrialization of Asia, issues of an economic nature on behalf of a growing working class are also very important. Many of the workers face appalling conditions, including seven-day work weeks and horrendous safety conditions. These only get attention when disaster strikes, such as the fatal factory fires in Thailand, China, and Bangladesh in past years. As the AHRC Executive Director Basil Fernando mentions, "if someone goes to prison, they [Western groups] raise it. But if a particular dam is built and many people suffer, they don't raise it. That is not to say that what they are doing is wrong, but it's limited."² However, this is yet another issue on which Asia and the West seem likely to collide. The United States and France have suggested that a worldwide minimum wage be adopted by the World Trade Organization to stop the exploitation of workers in poor countries. Malaysian Prime Minister Mahathir Mohammad said, "[t]he West's professed concern about the worker's welfare is motivated by self-interest because low wages are the developing world's only competitive advantage against the industrialized West."³

IV. REPORTING AND COMPLAINT PROCEDURES

The decisions of both the European Commission of Human Rights and the Inter-American Commission on Human Rights are not legally binding. The Commissions first try to seek a friendly settlement between the parties and second, make a judgement on the facts. The European Commission is stricter than the Inter-American Commission about the requirements of individual petitions. For example, it requires that the State has accepted the right of individual parties, the domestic remedies of the State have been exhausted, and the petition is sent on the proper application form. If the Asian Human Rights Commission is to follow these procedures, it may run the risk of ignoring a huge group of people. First, many Asian states do not accept the rights of individual parties. Singapore, China, and Indonesia are examples. Second, the domestic remedies may be more difficult for individual parties to obtain due to corruption, unjust and unequal legal systems, untrustworthiness, or insecurity. Third, it is going to be very difficult to make the proper application form available to individuals and to local NGOs if it can even be obtained from the Commission office. Not having a common language is another problem.

2. John Kohut, *Asian Equations for Human Rights*, SOUTH CHINA MORNING POST, Feb. 17, 1995, at 19.

3. Charles P. Wallace, *Malaysian Censors Move to Ban 'List'*, L.A. TIMES, May 24, 1994, at 1.

If the application is in English it will reach only a small group of people. On the other hand, if it is written or even translated in one of the local languages in a given country, the Commission's work may be delayed due to the unavailability of translators.

The Inter-American Human Rights Commission requires that the petition include a cover letter, summary of the facts, and the evidence relied on in the form of Annexes. This procedure may be easier for the Asian Human Rights Commission to follow. However, again there are the problems of translation, preparing the required documents or having any concrete evidence. The Commission will need to seriously consider how much flexibility will be allowed concerning the petitions.

In some countries difficult conditions exist in making such complaints. Such restrictions are limitations imposed on the practice of popular and participatory democracy. In some countries, the information relating to violations of rights, provided by or on behalf of the victims, is passed on to the perpetrators of such violations, who in return resort to further repressive measures, including assassinations in revenge.⁴

Decades of betrayal, corruption and insecurity have made Asians suspicious. The Commission will face the challenge to prove itself trustworthy, and working promptly on cases will help it to prove its effectiveness.

V. CONCLUSION

The Commission should try to promote the idea that basic civil and political liberties are essential, not only for the sake of individual freedom, but also for the sake of social, political, and economic stability. Both the advocates of individual human rights and business groups need to be approached to support this. Asian people want just as much respect for individual rights as the people of any other region. "Any claim for cultural exceptionalism to exclude human rights is false, non-authentic, and is a pretext to justify latent or blatant forms of repression and to legitimize the action which violates the rights of all for the benefit of some individuals."⁵

Concerning the enforcement of human rights, effective mechanisms to bring human rights violations to light and to protect individuals are needed. Populations must be educated and mobilized to create change through alternative thinking from within the culture. In addition, the Commission may engage itself in identifying human rights standards consistent with the Asian cultural conceptions.

4. Asian Human Rights Commission, *supra* note 1.

5. Kohut, *supra* note 2.

The Human Rights Commission can work actively by enhancing cooperative interaction among governments, NGOs, and international organizations. In these cooperative arrangements, the Commission would not only be responsible for monitoring and documenting violations, but also for helping the government correct their actions. Cooperation by the Commission with governments involves tension in maintaining a position that can be perceived as political, motivated by no other interest but commitment to human rights, advocating specific policies and measures to advance human rights and human rights traditional protections.